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ELIZABETH A. CAVANAGH

November 17, 2000

BY MESSENGER

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington DC 20554

Re: *In the Matter of 2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202

Dear Ms. Roman-Salas:

Enclosed for filing in the above referenced proceeding, please find an original and four copies of the Joint Comments of WorldCom, AT&T, Concert, Qwest, and Sprint. An extra copy has also been included to be file-stamped and returned.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Elizabeth A. Cavanagh

Elizabeth A. Cavanagh

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
2000 Biennial Regulatory Review	)	IB Docket No. 00-202
Policy and Rules Concerning the International, Interexchange Marketplace	)	

JOINT COMMENTS OF WORLDCOM, AT&T, CONCERT, QWEST, AND SPRINT

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EXECUTIVE SUMMARY

In this proceeding, the Commission seeks comment on whether the detariffing policy applicable to domestic interexchange services should be extended to international services.

1. WorldCom, AT&T, Concert, Qwest, and Sprint ("the undersigned carriers") strongly support the Commission's decision to extend its complete detariffing policy to international interexchange services by forbearing from requiring non-dominant carriers to file tariffs with respect to international interexchange services.

2. The undersigned carriers agree that carriers classified as dominant due to a foreign carrier affiliation should be subject to complete detariffing of their international interexchange services. Alternative means are available to police and prevent "price squeeze" activity or other anticompetitive conduct by such carriers; the Commission should not create two separate regulatory regimes.

3. The undersigned carriers support the Commission's tentative conclusion that permissive detariffing is in the public interest for international dial-around services, as well as during the first 45 days of service to new customers that choose their long-distance provider through their local service provider. Under these circumstances, permissive detariffing will allow non-dominant international interexchange carriers to establish binding carrier-customer relationships in the most cost-efficient way.

4. The undersigned carriers endorse the Commission's proposal to clarify its rules so that only the following are required to file carrier-to-carrier contracts: (1) interexchange carriers classified as dominant for reasons other than foreign affiliation; and (2) interexchange carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power. The

filing of carrier-to-carrier contracts is unnecessary in all other circumstances. Moreover, the undersigned carriers agree that as a general matter, carriers should not be required to file copies of agreements with foreign governments.

5. Finally, the undersigned carriers urge the Commission to adopt a transition period of at least nine months — the period initially granted to non-dominant domestic interexchange carriers — to permit non-dominant international interexchange carriers sufficient time to adjust to a completely detariffed regime. During that period, the FCC should allow permissive detariffing, so that carriers can, where possible, make a seamless transition for themselves and their customers to complete detariffing of all services. The Commission also should grant an additional extension of the final date for complete domestic detariffing, to permit simultaneous detariffing of services.

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JOINT COMMENTS OF WORLDCOM, AT&T, CONCERT, QWEST, AND SPRINT

WorldCom, Inc. ("WorldCom"), on behalf of all its operating carriers; AT&T Corp. ("AT&T") and its affiliates, Concert Global Networks U.S.A. L.L.C. and Concert Global Networks Services Ltd. ("Concert"); Qwest Communications Corporation ("Qwest"); and Sprint Communications Company L.P. ("Sprint") (collectively, "the undersigned carriers") respectfully submit these joint comments in response to the Commission's Notice of Proposed Rulemaking (IB Docket No. 00-202), released October 18, 2000 ("Notice" or "NPRM"). In that Notice, the Commission sought comment on whether the detariffing policy applicable to domestic interexchange services should be extended to international services.

BACKGROUND AND SUMMARY

In October 1996, the Commission issued the Second Report and Order, imposing "mandatory" detariffing of domestic services — that is, prohibiting carriers from filing domestic interexchange tariffs and ordering carriers to rescind any tariffs on file within nine months of the effective date of the Order. *See In re Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11

F.C.C.R. 20730 (1996) ("Second Report and Order"). On reconsideration, the Commission modified its decision to allow tariffing of domestic services under certain limited circumstances and eliminated the public disclosure requirement that had been imposed by the Second Report and Order. *See In re Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Order on Reconsideration, 12 F.C.C.R. 15014 (1997) ("Recon. Order"). On further reconsideration, the Commission reinstated the public disclosure requirement and mandated online disclosures by carriers with existing websites. *See In re Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Order on Reconsideration and Erratum, 14 F.C.C.R. 6004 (1999) ("Second Recon. Order"). The D.C. Circuit upheld the Commission's orders (collectively, the "Detariffing Orders") on April 28, 2000,[1/] and, on May 1, 2000, lifted a stay of the Orders it had previously entered.[2/]

On May 9, 2000, the Common Carrier Bureau issued a Public Notice establishing a new transition period for detariffing of domestic services beginning May 1, 2000, and ending January 31, 2000.[3/] In response to that Public Notice, many parties submitted comments calling for the prompt initiation of a proceeding that would address whether international service offerings should be detariffed, as domestic

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1/ *See MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

2/ *See MCI WorldCom, Inc. v. FCC*, No. 96-1459, Order (D.C. Cir. May 1, 2000).

3/ The Common Carrier Bureau has since extended the transition period for detariffing of certain domestic services until April 30, 2001. *See* Public Notice (DA 00-2489, CC Docket No. 96-61), released November 6, 2000; *In re Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Order ¶ 1 (CC Docket No. 96-61), released Nov. 17, 2000 ("Transition Order").

service offerings have been. On October 18, 2000, the Commission released a Notice that proposes to do exactly that. In response, WorldCom, AT&T, Concert, Qwest, and Sprint submit these joint comments.

First, the undersigned carriers strongly support the Commission's conclusion that it should extend its complete detariffing policy to non-dominant providers of international interexchange services. Such a determination is clearly within the Commission's authority, and doing so is fully consistent with the requirements of Section 10 of the Communications Act.

Second, the undersigned carriers agree that carriers that are classified as dominant due to a foreign carrier affiliation should also be subject to complete detariffing of their international interexchange services. The Commission need not maintain tariff-filing requirements in order to address concerns that such carriers might engage in "price squeeze" activity or other anticompetitive conduct. Alternative means are available to police and prevent such conduct; thus, there is no reason to create two separate regulatory regimes.

Third, the undersigned carriers support the Commission's tentative conclusion that permissive detariffing is in the public interest for international dial-around services, as well as during the first 45 days of service to new customers that choose their long-distance provider through their local service provider. Under these circumstances, permissive detariffing will allow non-dominant international interexchange carriers to determine the most cost-efficient mechanisms for establishing binding carrier-customer relationships.

Fourth, the undersigned carriers endorse the Commission's proposal to clarify its rules so that only the following are required to file carrier-to-carrier contracts: (1) interexchange carriers classified as dominant for reasons other than foreign affiliation; and (2) interexchange carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power. The filing of carrier-to-carrier contracts is unnecessary in all other circumstances. Moreover, carriers should not have to file contracts with foreign governments that do not provide communications services directly through a governmental organization, body, or agency.

Finally, the undersigned carriers urge the Commission to adopt a transition period of at least nine months from the effective date of its order — the transition period initially granted to non-dominant domestic interexchange carriers — to permit non-dominant international interexchange carriers sufficient time to adjust to a completely detariffed regime. During that period, however, the FCC should allow immediate implementation of permissive detariffing, as it has in the domestic context, so that carriers can, where possible, make a seamless transition to complete detariffing of all services. The Commission also should grant an additional extension of the final date for complete domestic detariffing, to permit simultaneous detariffing of services.

I. The Commission Should Extend Its Policy of Complete Detariffing to International Interexchange Service Offerings by Non-Dominant Carriers.

The undersigned carriers strongly support the Commission's tentative decision to completely detariff international interexchange service offerings by non-dominant

carriers. The Commission plainly has the authority to order the detariffing of such offerings, and the policy considerations on which the Commission relied when adopting complete detariffing of domestic services apply equally to international services. Moreover, the existing dual regime — under which domestic services are subject to complete detariffing, but international services are not — increases administrative costs and creates difficulties for both carriers and customers. Thus, the undersigned carriers endorse the Commission's conclusion that it should forbear from Section 203's requirement that non-dominant carriers file tariffs for their provision of international interexchange services.[4/]

The Commission's authority to adopt complete detariffing pursuant to Section 10 of the Communications Act is clear. In its recent decision affirming the Detariffing Orders, the D.C. Circuit conclusively dispelled any doubt about the FCC's statutory authority to prohibit the filing of tariffs. *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C.

4/ In reaching that conclusion, however, the Commission also seeks to impose the same burdensome disclosure and recordkeeping requirements that are applicable to non-dominant carriers on the domestic side. *See, e.g.*, NPRM ¶¶ 5(b), 5(c), 25, 49. Such unnecessary requirements are out of place in the current deregulatory environment, and are in tension with the Commission's stated goal of treating telecommunications carriers more like entities in other, less regulated industries in similarly competitive markets. *See, e.g., id.* ¶ 17 ("Complete detariffing will . . . establish[] market conditions that more closely resemble an unregulated environment."). The better approach with respect to both domestic and international interexchange services, and the approach that is most consistent with the Commission's stated objective of having non-dominant interexchange carriers operate in the same type of environment as firms in non-regulated markets, would leave it to such carriers to develop appropriate and efficient ways to maintain data and to inform their customers about rates, terms, and conditions of service. Nevertheless, the undersigned carriers agree that the Commission should extend its complete detariffing policy to international interexchange services.

Cir. 2000). Moreover, extending the detariffing rules to international offerings by non-dominant interexchange carriers satisfies the statutory criteria for forbearance pursuant to Section 10(a) of the Communications Act.[5/]

The market for international service offerings is now as competitive as the market for domestic service offerings. As the Commission has recognized, "increased privatization and liberalization of foreign markets, rapidly declining international settlement rates, and larger numbers of providers of international interexchange service" have profoundly altered competitive conditions in the international interexchange market during recent years, so that "there has been a substantial increase in the level of competition in" that market "that has benefited consumers." NPRM ¶ 4; *see also id.* ¶¶ 8-11. In light of such increased competition, the Commission is correct that tariff-filing requirements are not necessary to ensure that the charges, practices, classifications, and regulations for the international interexchange services of non-dominant carriers are just and reasonable, and are not unjustly or unreasonably discriminatory. *Id.* ¶ 7.

Nor are tariff-filing requirements necessary for the protection of consumers. *Id.* Indeed, the Commission already has concluded — in the domestic context — that

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5/ Those criteria are as follows: (1) "enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly discriminatory"; (2) "enforcement of such regulation or provision is not necessary for the protection of consumers"; and (3) "forbearance from applying such provision or regulation is consistent with the public interest." 47 U.S.C. § 160(a).

complete detariffing better serves the public interest than tariffing does, in part because detariffing prevents carriers from relying on the filed-rate doctrine. *See* Second Report and Order ¶ 60; *see also* NPRM ¶ 15. The same conclusion is appropriate here. *See* NPRM ¶ 20 (concluding that complete detariffing of international interexchange service offerings is in the public interest).

Finally, as long as different legal regimes apply to international service offerings and domestic service offerings, administrative costs increase and it is particularly difficult for carriers and their business customers to craft workable term agreements. A prompt decision to detariff international interexchange services provided by non-dominant carriers will help to eliminate these problems. For all of these reasons, the undersigned carriers support the Commission's decision to extend complete detariffing to international interexchange services.

II. Carriers That Are Classified as Dominant Due to a Foreign Carrier Affiliation Should Also Be Subject to Complete Detariffing of Their International Interexchange Services.

The undersigned carriers agree with the Commission's tentative conclusion that carriers that are classified as dominant because of an affiliation or alliance with a foreign carrier with market power in its home market should be subject to complete detariffing of their international interexchange services. *See* NPRM ¶ 2. The Commission previously has expressed concern that such carriers could leverage their dominance to engage in "price squeeze" activity (*i.e.*, by setting prices below the level of

imputed costs) in the U.S. international services market.[6/] But requiring complete detariffing of the international interexchange services of such carriers would have no effect on the Commission's "ability to monitor potential price squeeze behavior" on affiliated routes. NPRM ¶ 28. The Commission correctly concludes that any concerns that carriers might engage in price squeeze activity or other anticompetitive conduct may be better addressed in other ways, without creating two separate regulatory regimes.

For example, the Commission retains the power to request rate information from carriers at any time on a case-by-case basis. Moreover, the Commission proposes that carriers should be required to "maintain price and service information, including documents supporting the rates, terms, and conditions of the carriers' international interexchange offering," for at least 30 months. *See id.* ¶ 28; *see also id.* ("this maintenance of information requirement will address any concerns regarding potential anticompetitive pricing strategies by U.S. carriers classified as dominant due to their foreign affiliations").

The undersigned carriers agree that the availability of such options, among others, eliminates any need for tariffing of international interexchange services provided by carriers affiliated with a dominant foreign carrier, particularly in light of the fact that the Commission does not monitor current rates in tariffs in any event, but instead simply

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6/ *See, e.g., In re International Settlement Rates*, Report and Order, 12 F.C.C.R. 19806 (1997), *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999); *see also* NPRM ¶ 27.

reacts to filed complaints. Thus, the Commission should adopt its tentative conclusion to extend complete detariffing to carriers affiliated with a dominant foreign carrier.

III. The Commission Should Allow Permissive Detariffing With Respect to Dial-Around 1+ Services and During the First 45 Days of Service to New Customers Who Choose Their Long-Distance Provider Through Their Local Exchange Carrier.

WorldCom, AT&T, Concert, Qwest, and Sprint strongly support the Commission's tentative conclusion that permissive detariffing, rather than complete detariffing, is in the public interest in certain circumstances: (1) for international, interexchange direct-dial services to which end-users obtain access by dialing a carrier's access code, and (2) during the first 45 days of service to new customers who contact their local exchange carrier ("LEC") to choose their long-distance provider. *See* NPRM ¶¶ 5(a), 20.

As the Commission recognized in its proceedings on domestic detariffing, the provision of direct-dial services to which end-users obtain access by dialing an access code — *i.e.*, "dial-around 1+ services," *id.* ¶ 20 — presents unique problems for a complete detariffing regime. In the absence of tariffs, interexchange carriers may not be able to establish enforceable legal relationships with customers who use dial-around 1+ services, "because interexchange carriers have not implemented universally the technology to allow them to distinguish a caller using dial-around 1+ services from direct dial 1+ services." *Id.* Thus, the Commission properly concluded that complete detariffing would not be appropriate in this context at this time. *See id.* Permissive detariffing will allow non-dominant international interexchange carriers to determine the

most cost-efficient mechanism for establishing binding carrier-customer relationships in connection with dial-around 1+ services.

The same approach is appropriate when a new customer chooses to contact a LEC to select (or change) an interexchange carrier. In that situation, "the interexchange carrier has no direct contact with the customer and may not be able to ensure that a legal relationship is established with that customer for some period of time." *Id.* ¶ 21. Thus, the Commission concludes that interexchange carriers may rely on tariffs to establish a binding relationship with such customers during a short period of time at the outset of service, "or until there is a written contract between the carrier and the customer," whichever is earlier. *Id.* ¶ 20. The undersigned carriers endorse this approach, and agree that an initial, 45-day period of permissive detariffing would permit carriers to establish binding carrier-customer relationships. *See id.* ¶ 21.

IV. Only Interexchange Carriers Classified as Dominant on a Particular Route for Reasons Other Than a Foreign Affiliation, and Interexchange Carriers That Contract Directly for Services With Foreign Carriers That Possess Market Power, Should Be Required to File Carrier-to-Carrier Contracts.

The Commission proposes to clarify that "only interexchange carriers classified as dominant for reasons other than a foreign affiliation under Section 63.10 of the Commission's rules," and interexchange carriers — whether classified as dominant or non-dominant — that contract directly for services with a foreign carrier that possesses market power in its foreign market are required to file carrier-to-carrier contracts pursuant to Section 43.51 of the Commission's rules. NPRM ¶ 5(e); *see also id.* ¶ 32; 47 C.F.R. §§ 43.51, 63.10. The undersigned carriers support this clarification of the

FCC's rules, and agree that the filing of carrier-to-carrier contracts is unnecessary in all other circumstances. The undersigned carriers also agree that as a general matter, carriers should not be required to file copies of agreements with foreign governments.

As the Commission properly concludes, there is simply no reason to apply the contract-filing requirement to U.S. carrier arrangements with a foreign carrier that lacks market power. *See* NPRM ¶ 37. Such arrangements "would not result in harm to competition and consumers in the U.S. market," *id.* ¶ 36, because a foreign carrier that lacks market power in its own market cannot adversely affect competition in the U.S. market. Similarly, if both contracting U.S. carriers lack market power, they "generally will be unable to engage in anticompetitive behavior because of their lack of control over bottleneck facilities and competitive pressures from other carriers." *Id.* ¶ 38. Thus, there are no "competitive harms that the filing of copies of contracts between carriers that both lack market power would help prevent." *Id.* ¶ 40. Accordingly, rather than impose an unnecessary regulatory burden on such carriers, the Commission should clarify its rules and limit the applicability of the contract-filing requirement.

The Commission should also amend 47 C.F.R. § 43.51 to make clear that it is not necessary for carriers to file copies of agreements with foreign governments. *See id.* ¶ 39. The only reason to require the filing of contracts is "to monitor whether carriers with market power are acting in a manner that may adversely affect competition in the U.S. market." *Id.* Agreements between U.S. carriers and foreign governments generally do not raise this concern. Moreover, the Commission properly concludes that "to the extent that a foreign government is acting as a foreign carrier by directly

providing international telecommunications services, the contract filing requirements would apply." *Id.* Thus, carriers should not have to file contracts with foreign governments that do not provide communications services directly through a governmental organization, body or agency.

V. The Commission Should Adopt a Transition Period of at Least Nine Months to Allow Non-Dominant International Interexchange Carriers Adequate Time to Adjust to Complete Detariffing.

In its Notice, the Commission invited comments with respect to issues relating to the transition to a complete detariffing regime. *See* NPRM ¶ 5. In response, WorldCom, AT&T, Concert, Qwest, and Sprint urge the Commission to adopt a transition period of at least nine months — the amount of detariffing time initially allotted with respect to domestic interexchange services — to permit non-dominant international interexchange carriers to have an adequate amount of time to adjust to complete detariffing. During that period, the FCC should allow permissive detariffing, as it has in the domestic context, so that carriers can, where possible, make a seamless transition for themselves and their customers to complete detariffing for all services. The Commission also should grant an additional extension of the final date for complete domestic detariffing, to allow for the optimal amount of simultaneity in the detariffing of services.

In the context of domestic detariffing, the Commission originally adopted a transition period of nine months, set to end on January 31, 2001. That period has since been extended, in the context of certain domestic services, so that it will end on April 30, 2001. During the transition period, carriers have had the opportunity to detariff their

domestic interexchange services gradually, and to develop new, cost-efficient ways of establishing binding relationships with customers. Carriers' experiences with implementing complete detariffing of domestic interexchange services have demonstrated, however, that this is a difficult, costly, and time-consuming process. Moreover, it appears that many consumers are confused and concerned about detariffing.

Unfortunately, the complete detariffing of international interexchange services may be even more difficult for carriers and consumers, in light of the number of different countries and the specialized nature of international calling plans. International rate structures are far more complex than their domestic counterparts. Simply informing consumers about carriers' rates to 280 countries — not to mention establishing enforceable legal relationships with consumers in connection with those rates — will be an enormous undertaking. Thus carriers also must develop a way to inform customers about foreign country–to–foreign country rates (for example, the applicable rate if a customer uses a calling card to place a call from France to Brazil). And, of course, carriers will also have to develop and deliver customer communications explaining the new transactional environment, as carriers have been required to do in the domestic context.

To avoid such costly duplication of effort, many carriers have supported simultaneous detariffing of domestic and international interexchange services, with an identical, overlapping transition period applicable to both. *See, e.g.*, Letter to D. Abelson, Chief, International Bureau, FCC, from M. Brown, WorldCom, Inc., *et al.* (July

18, 2000); *see also* Reply Comments of WorldCom, Inc. (CC Docket No. 96-61, filed June 9, 2000). Such an approach would permit carriers to detariff *all* of their services, and make the terms and conditions of such services publicly available on the Internet and elsewhere, *see* 47 C.F.R. § 42.10, at the same time. The Commission's Notice in this proceeding was not released until October 18, 2000, and reply comments are not due until December 4, 2000. The Commission has extended the transition period as to certain domestic interexchange services until April 30, 2001, however, "in order to allow the Commission to consider whether to establish a coordinated timetable for detariffing domestic and international customer services." Transition Order ¶ 4.

At the very least, the Commission should allow permissive detariffing of international interexchange services for a period of at least nine months, as it originally did in the domestic context.[7/] Given the amount and complexity of the work involved in moving to a completely detariffed world, *see supra*, a transition period of at least nine months is commercially reasonable. Such a period would be particularly appropriate in light of the fact that the timing for international detariffing was unclear and some carriers focused their efforts on preparing for domestic detariffing within the time set by the Commission, rather than attempt to address international detariffing unnecessarily. Moreover, as discussed, international detariffing may prove to be a more complex process than domestic detariffing.

7/ In the domestic context, the Commission has made clear that it will continue to accept new tariffs and tariff revisions for "mass market interstate, domestic, interexchange services" throughout the transition period. Second Report and Order ¶ 90; *see also* Transition Order ¶ 26.

Finally, prompt action by the Commission is very important. Although a full nine months or more will be necessary to transition to a completely detariffed world, if the Commission acts promptly to order permissive international detariffing, some carriers may be able to implement both (mandatory) domestic and (permissive) international detariffing of certain services simultaneously. In addition to acting quickly to begin the transition period, and allow for permissive detariffing of international services, the Commission should grant an additional extension of the final date for complete domestic detariffing. *See* Transition Notice ¶ 4. This will allow for the optimal amount of simultaneity in the detariffing of services, and thereby minimize customer confusion and save carriers an enormous amount of additional transition costs.

Respectfully submitted,

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Dated: November 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2000, I caused true and correct copies of the foregoing "Joint Comments of WorldCom, AT&T, Concert, Qwest, and Sprint" to be served by first-class United States mail, postage pre-paid, upon the following:

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